

J.A. HUDSON, CSB #85799
Hugo N. Gerstl, CSB #037927
GERSTL & HUDSON
2460 Garden Road, Suite C
Monterey, CA 93940
Telephone: (831) 649-0669
Facsimile: (831) 649-8007

Attorney for Plaintiff

**UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

MICHAEL R. ALLEN,

Plaintiff,

v.

J. CRAIG HAMILTON, JR., individually and as
Trustee of PLEXCO TRUST, JOHN D. FARRALD, as
Trustee of PLEXCO TRUST, PLEXCO TRUST, a
California Trust, JRL PROPERTIES, INC., a Texas
corporation, and DOES 1-10, Inclusive,

Defendants.

Case No. C07-03382-PVT

(PROPOSED) RESPONSE TO COUNTERCLAIM

Plaintiff MICHAEL R. ALLEN responds to Defendants' and Counterclaimants' unverified
counterclaim as follows:

1. Admits the allegations contained in paragraph 36.
2. Denies the allegation contained in paragraph 37 that "No service of process is
required for ALLEN because he has already appeared in this action as Plaintiff." Plaintiff has never
formally "appeared" in "this" action. Plaintiff filed an original action in Monterey County Superior
Court, a state court where there is no such pleading as a counterclaim.

EXHIBIT "A"

NEGLIGENT MISREPRESENTATION

12. Incorporates herein his responses to paragraphs 40-47 of Defendants' Counterclaim.

13. Denies generally and specifically, each and every allegation contained in paragraphs 57, 58, 59, 60, and 61 of the Counterclaim.

14. Affirmatively alleges that this purported count fails to state facts sufficient to constitute a cause of action (FRCP Rule 12(b)(6)).

CONDITIONS PRECEDENT

15. Denies the allegations contained in paragraph 62.

16. Affirmatively alleges that the allegations contained in paragraph 62 are meaningless and uncertain in that it relates to no specific count or cause of action. "Condition precedent" refers to contract counts or causes of action and no such counts are causes of action in sounding in contract are set forth in the Counterclaim.

ATTORNEY'S FEES

17. Denies the allegations contained in paragraph 62.

18. Said allegations should be stricken as immaterial and not filed in accordance with the rules of this or any court. Counterclaimants allege neither a written contract nor a statute on which they base their claim for attorney's fees; without such allegations, Counterclaimants are not entitled to attorney's fees.

1 WHEREFORE, PLAINTIFF/COUNTERDEFENDANT PRAYS that Counterclaimants take nothing
2 by way of their Counterclaim and that Plaintiff recover all costs of suit herein incurred; and for such
3 other and further relief as shall deem proper.
4

5 Dated: August 17, 2007

6 J.A. HUDSON, Attorney for Plaintiff/Movant
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28